

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ADVANCED BASEBALL ACADEMY, LLC)

Plaintiff,)

v.)

GOOGLE, INC.)

and)

ALI SEELING, an individual d/b/a)

GOLDGLOVEKC d/b/a GOLD GLOVE)

BASEBALL AND SOFTBALL ACADEMY)

Defendants.)

Civil Action No.

COMPLAINT

COMES NOW PLAINTIFF, Advanced Baseball Academy, LLC (“ABA”), for its Complaint against Google, Inc., and Ali Seeling d/b/a GoldGloveKC d/b/a Gold Glove Baseball and Softball Academy and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff ABA in a Kansas limited liability company having it principal place of business in Paola, Kansas.

2. Upon information and belief, Defendant is an individual doing business under Gold Glove Baseball and Softball Academy located at 15585 S. Keeler, Olathe, KS, 66062.

3. Upon and information and belief, Google, Inc. (“Google”) is a Delaware corporation with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA, 94043.

4. Upon information and belief, Google is engaged in the business of providing Internet Services to customers through the world including within this judicial district.

5. This is an action for trademark infringement, false designation of origin, and unfair competition, arising under the Lanham Act, 15 U.S.C. § 1125, the statutory and common law of the State of Kansas and for copyright infringement under 17 U.S.C. § 501 *et seq.*

6. This court has jurisdiction on over the subject matter of the complaint pursuant to 15 U.S.C. § 1121, 28 U.S.C § 1331 and over the unfair competition cause of action under 28 U.S.C. § 1138(b) and 28 U.S.C. § 1367.

7. Furthermore, this Court has pendant jurisdiction of the common law trademark infringement claims pursuant to 28 U.S.C. § 1338(b) since this claim is joined with substantial and related claims under the Lanham Act and Copyright laws.

8. Upon information and belief, this court has personal jurisdiction over Seeling as she resides in Olathe, Kansas and Google as it conducts business throughout the state of Kansas, both of which are within this jurisdiction. Venue is proper in this district pursuant to 28 U.S.C. § 1391 & 1400 because Defendants' conduct business within the judicial district, they or their agents or affiliates can be found in this judicial district and acts giving rise to this complaint are believed to have occurred within this judicial district.

FACTS COMMON TO ALL COUNTS

ABA's Background

9. ABA operates a baseball and softball coaching and training facility under the name Gold Glove Boot Camp and maintains a website located at the URL www.goldglovebootcamp.com for the promotion and sale of training camps. A screen shot is

attached as Exhibit C. ABA's coaches have spent over two decades providing baseball and softball services, namely, camps and individual athlete and team coaching services. ABA's coaches are considered to be some of the best in the state of Kansas and are often sought after by individuals and teams looking for someone with baseball and softball expertise, who can provide baseball and softball camps and coaching services. ABA's baseball and softball camps and coaching services constitute a substantial and important part of ABA's business.

10. ABA actively and prominently promotes its services in Kansas and Missouri using a stylized "Double G" mark in its advertisements, including, but not limited to, online advertisements, print advertisements and business cards.

11. ABA actively and prominently promotes its services in Kansas using the term GOLD GLOVE BOOT CAMP which serves as a word mark (ABA WORD MARK).

12. ABA's stylized mark serves as its logo in its advertising and promotional materials. ABA's logo is unique and distinctive logo formed with a pair of mirrored G's using a yellow color ("ABA LOGO"). ABA actively and prominently promotes its services in Kansas and Missouri using its distinctive logo.

13. ABA has used the word mark substantially and continuously prior to use by Seeling. ABA has expended substantial amounts of money promoting the ABA LOGO and as such, the ABA LOGO serves to identify ABA as the source of services bearing the marks.

14. ABA word mark serves as its common law trademark in its advertising and promotional materials. ABA actively and prominently promotes its services in Kansas and throughout the U.S. using its word mark.

15. ABA has used the ABA LOGO substantially and continuously prior to use by Seeling. ABA has expended substantial amounts of money promoting the ABA LOGO and as

such, the ABA LOGO serves to identify ABA as the source of services bearing the marks.

16. ABA has applied for a federal copyright registration for its artwork associated with the ABA LOGO. A copy of the copyright application is attached as Exhibit A.

17. ABA has a federal trademark application for its ABA LOGO which was filed on September 1, 2014 and is presently pending as serial number 86/382,140.

18. ABA used the TM identifier in connection with its ABA LOGO on its website and print material and based upon information and belief, was made known to Defendant Seeling prior to its use of the ABA LOGO.

Seeling Conduct

19. Upon information and belief, defendant Seeling started doing business on or around November of 2013. Seeling's services are identical or nearly identical to those of ABA. For instance, Seeling offers baseball and softball camps and coaching services. Seeling's services, however, is less expensive and is a lower quality.

20. Seeling is promoting its services in Kansas using the ABA LOGO in its advertisements, including, but not limited to, online, print and promotional materials. A copy of Seeling's website is attached as Exhibit D.

21. Seeling is promoting its services in Kansas and around the U.S. using the term Gold Glove KC (THE COPIED MARK) which is confusingly similar to ABA WORD MARK in its advertisements, including, but not limited to, online, print and promotional materials.

22. ABA actively and prominently promotes its services in Kansas using the ABA LOGO.

23. Prior to filing the present litigation and in an effort to resolve the parties' dispute, ABA sent Seeling a letter to try and amicably resolve the matter. Seeling, however, did not reply

to ABA's letter. A copy of the returned card is attached as Exhibit 2.

24. In further attempt to resolve the present dispute, ABA sent a DMCA takedown request using the DMCA take down form at Google.com. Google has failed to respond to the take down request.

COUNT 1 – TRADEMARK INFRINGEMENT
15 U.S.C. § 1125

25. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

26. ABA has adopted and used the ABA LOGO and the copied mark as its trademark.

27. Defendant Seeling's use of the ABA LOGO and the copied mark to identify their baseball and softball services constitutes use and colorable imitation of ABA's LOGO, and is likely to cause or has caused confusion, mistake, or deceived the purchasing public into believing that the services of Defendant Seeling emanate from the same source as the services provide by ABA, or that there is some connection, sponsorship, or affiliation between the services of Defendant Seeling and ABA.

28. Defendant Seeling's conduct constitutes an infringement of ABA's LOGO and ABA's WORD MARK and is actionable under the provisions of 15 U.S.C. § 1125.

29. Upon information and belief Defendant Seeling's conduct has been, or at least continues, with the intent to willfully appropriate the marks and goodwill of ABA and to intentionally deceive the purchasing public.

30. Defendant Seeling is aware of the prior rights of ABA and will continue its conduct as set forth above to the irreparable damage of ABA unless enjoined by the court, whereby ABA is without a full and adequate remedy at law.

COUNT 2 – TRADEMARK INFRINGEMENT
15 U.S.C. § 1125

31. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

32. This count is pled against Defendant Google.

33. Google exercises dominion and control over the websites it hosts including www.goldglovekc.com and thus exercises dominion and control over Defendant Seeling's use of the ABA LOGO on its website.

34. Notwithstanding Google's ability to terminate Defendant Seeling's ability to use the ABA LOGO on its website, and despite ABA's demand that Google do so, Google has failed to takedown the infringing content on Defendant Seeling's website.

35. Google's website hosting system allows for the contents of every hosted website to be available to anyone with access to the internet. Hence, with full knowledge of ABA's rights in its logo, and over its request to cease and remove the infringing contents, Google continues to deliver and make the infringing content available to everyone and thus infringes ABA's rights the ABA LOGO.

36. The damage suffered by ABA as a result of Google's infringement of ABA's rights in the ABA LOGO is irreparable and continuing.

37. Upon information and belief, such conduct of Defendant Google is ongoing and will continue to irreparable damage to ABA, unless enjoined by the court, whereby ABA is without a full and adequate remedy at law

COUNT 3 – CONTRIBUTORY TRADEMARK INFRINGEMENT
15 U.S.C. § 1125

38. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

39. This Count is pleaded in the alternative to Count 2 against Defendant Google.

40. Defendant Google has provided the means on the Internet by which Defendant Seeling has infringed ABA's rights in the ABA LOGO.

41. Google has knowledge of plaintiff's registration application with the U.S. Patent and Trademark Office in the ABA LOGO.

42. Notwithstanding this knowledge, defendant Google continues to host Defendant Seeling's website that uses the ABA LOGO in a manner which infringes plaintiff's rights in its federally registered trademarks.

COUNT 4 – FALSE DESIGNATION OF ORIGIN
15 U.S.C. § 1125

43. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

44. Defendant Seeling's conduct as recited herein, including its use of names and marks on and in connection with baseball and softball services as printed on its advertising, promotion and rendering of its services, constitutes a false designation of origin in that the use of the ABA LOGO and THE COPIED MARK in connection with the services of Defendant Seeling, is likely to cause confusion, to cause mistake, or to deceive others as to the affiliation, connection, or association of Defendant Seeling with ABA, or as to the origin, sponsorship, approval of their service and commercial activities by ABA and thus constitutes a violation of 15 U.S.C. § 1125(a).

45. Upon information and belief, such conduct is willful and intentional with the purpose of misleading the public into believing that the services of Seeling are in some way sponsored by, affiliated with, or connected to the services provided by ABA under its ABA marks, all of which are contrary to fact.

46. Upon information and belief, such conduct of Defendant Seeling is ongoing and will continue to irreparable damage to ABA, unless enjoined by the court, whereby ABA is without a full and adequate remedy at law.

COUNT 5 – UNFAIR COMPETITION
15 U.S.C. § 1125

47. ABA incorporates by reference all allegations of each of the above paragraphs as if fully set forth herein.

48. ABA has and currently uses its ABA WORD MARK AND LOGO (ABA MARKS) to identify itself as the source of their baseball and softball services.

49. As a result of the facts alleged above, Defendant Seeling has copied ABA MARKS which are associated with and are in indication of the source of origin of ABA's services. The mark as used by ABA has acquired a substantial and favorable reputation and goodwill in connection with the services offered by ABA which Defendant has benefited from in connection with its baseball and softball services.

50. Upon information and belief, Defendant Seeling continued unauthorized use of the ABA MARKS in Defendant Seeling advertising is likely to and is intended to cause confusion or mistake or to deceive as to the affiliation, connection or association between Defendant Seeling and ABA as to the possible origin, sponsorship or approval of Defendant Seeling's services by ABA.

51. Defendant Seeling's use of ABA's LOGO and THE COPIED MARKS are a misrepresentation that Defendant Seeling is affiliated with ABA, which constitutes unfair competition with ABA.

52. Defendant Seeling is continuing and upon information and belief is likely to continue its course of unfair competition, to the irreparable damage of ABA and in consequence thereof, unless Seeling is restrained and enjoined ABA will suffer further and irreparable damage for which ABA has no full and adequate remedy at law.

COUNT 6 – COPYRIGHT INFRINGEMENT
17 U.S.C. § 501

53. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

54. ABA has applied for a federal copyright for its artwork entitled www.goldglovebootcamp.com electronic copyright claim No. 1-1712218391, filed on September 1, 2014.

55. Defendant Seeling infringes Plaintiff's copyright through the unlawful reproduction display and distribution thereof.

56. To the extent that Defendant Seeling does not acknowledge copying ABA's artwork, Defendant Seeling had access to ABA's artwork by way of ABA's widespread advertisements featuring ABA's copyrighted work and the make used by Defendant Seeling is substantially similar to ABA's LOGO.

57. Defendant Google hosts Seeling's website and has failed to respond to ABA's DMCA takedown request.

58. This failure is not in compliance with the DMCA Safe Harbor requirements and therefore, Google is liable for its infringing acts.

59. To the extent Google does not acknowledge copying of ABA's artwork, Google has access to ABA's artwork by way of ABA's widespread advertisements on the Internet featuring ABA's copyrighted work and also has access through Seeling as its website contains ABA's copyrighted artwork.

60. Google has unlawfully reproduced ABA's copyrighted artwork by storing, transmitting and making available ABA's copyrighted work at the website located at www.goldglovekc.com using Google's servers to unlawfully display ABA's copyrighted artwork to the public via the Internet.

61. Upon information and belief, the infringing acts of Defendants were willful and intentional.

62. Defendant Seeling is continuing and on information and belief is likely to continue its course of infringement, to the irreparable damage of ABA, and in consequence thereof, unless Defendant Seeling is restrained and enjoined ABA will suffer further and irreparable damage for which Seeling has no full adequate remedy at law.

COUNT 7 – VICARIOUS LIABILITY FOR COPYRIGHT INFRINGEMENT

63. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

64. Google's failure to comply with the DMCA Safe Harbor requirements prevents Google from being shielded of liability for the infringing acts of Seeling.

65. Google had and continues to have the option and ability to supervise the infringing acts of Seeling.

66. Google had and continues to have a direct financial interest in and continues to receive a direct financial benefit from the infringing activities alleged herein including payments for hosting Defendant Seeling's website which displays the infringing materials.

67. Upon information and belief, Google's acts of infringement were willful and intentional.

68. Upon information and belief, Google is likely to continue its course of infringement, to the irreparable damage of ABA, and in consequence thereof, unless Google is restrained and enjoined ABA will suffer further and irreparable damage for which Google has no full adequate remedy at law.

COUNT 8 – UNFAIR COMPETITION UNDER KANSAS COMMON LAW

69. ABA incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

70. Defendant Seeling's conduct constitutes unfair competition under the common law of Kansas by a deliberate course of conduct, all without authorization, license, privilege or justification.

71. Defendant Seeling's actions constitute unfair completion under Kansas law, which unfair competition has caused injury to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, ABA demands a judgment against Defendant and prays that this Court will:

- a. Permanently enjoin Defendant Seeling, its agents, servants, employees, and attorneys and all persons in active concert or participation with them or acting for,

with, by, through, or alone or in association with other terms; from unfair completion with ABA; from falsely designation the origin of Selling's services; and from infringing ABA's copyrights and trademark rights.

- b. Grant to ABA an award and accounting of Seeling's profits, any damages sustained by ABA, and that all profits or damages to be trebled, the cost of this action, and ABA's attorneys' fees, pursuant to 15 U.S.C. § 1117, and/or 17 U.S.C. §§ 502-503.
- c. Award punitive damages for Seeling's acts of unfair competition.
- d. Permanently enjoin Defendant Google, its agents, servants, employees, and attorneys and all persons in active concert or participation with them or acting for, with, by, through, or alone or in association with other terms; from unfair completion with ABA; from falsely designation the origin of Selling's services; and from infringing ABA's copyrights and trademark rights.
- e. Grant to ABA an award and accounting of Defendant Google's profits, any damages sustained by ABA, and that all profits or damages to be trebled, the cost of this action, and ABA's attorneys' fees, pursuant to 15 U.S.C. § 1117, and/or 17 U.S.C. §§ 502-503.
- f. Grant to ABA an award of actual damages suffered by ABA and any additional profits of Defendants as a result of Defendants' infringement of ABA's copyrights and trademark rights pursuant to 15 U.S.C. § 1117, and/or 17 U.S.C. §§ 502-503 and 504(a) and (b).
- g. Order Defendants to jointly and severally pay the actual damages suffered by ABA and any additional profits of Defendants as a result of Defendants' infringement of

ABA's copyrights and trademark rights pursuant to 15 U.S.C. § 1117, and/or 17 U.S.C. §§ 502-503 and 504(a) and (b).

- h. Grant to ABA such further relief as may be equitable and proper.

DESIGNATION OF PACE OF TRIAL

Plaintiffs hereby designate Kansas City, Kansas as the place of trial of the above-styled matter.

REQUEST FOR JURY TRIAL

Plaintiffs hereby request trial by jury of the above-styled matter.

Respectfully submitted,

By: s/Arthur K. Shaffer

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General Information

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| Court | United States District Court for the District of Kansas; United States District Court for the District of Kansas |
| Nature of Suit | Property Rights - Trademark[840] |
| Docket Number | 2:14-cv-02461 |